

# **Arizona Health Care Cost Containment System (AHCCCS)**

## **Office of Program Integrity**

### **Deficit Reduction Act (DRA) Policy**

#### **Purpose:**

Eliminate Fraud, Waste and Abuse in Medicaid

#### **Authority:**

Public Law 109-171, section 6032. (a) (3): "...any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments shall-establish written policies for all employees of the entity..."

#### **Affected:**

Health Plans, Hospitals, Medical Facilities, Health Care Professionals; any entity that receives or makes annual Medicaid payments, under the state plan, of at least \$5 Million shall establish written policies.

#### **Written Policies:**

All employees and management to include contractors and agents must receive written information regarding the False Claims Act as established in PL 109-171, Chapter 3, sections 6031-6032.

#### **False Claims Act (FCA):**

United States Code Title 31 § 3729-3733

- The False Claims Act, also known as the "Lincoln Law," dates back to the Civil War.
- The original law included "*qui tam*" provisions that allowed private persons to sue those who defrauded the Government and receive a percentage of any recovery from the defendant.

#### **Activities Covered by the FCA:**

- Knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment;
- Knowingly using (or causing to be used) a false record or statement to get a claim paid by the Federal Government;

- Conspiring with others to get a false or fraudulent claim paid by the Federal Government; and
- Knowingly using (or causing to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Federal Government.
- *In general, the False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.*

#### **Liability for violating the FCA:**

- Three times the dollar amount that the Government is defrauded (i.e., treble damages) and civil penalties of \$5,500 to \$11,000 for each false claim

#### **How and When Can an individual Receive an Award for Blowing the Whistle Under the FCA?**

- You must file a *qui tam* lawsuit. Merely informing the Government about the False Claims Act violation is not enough.
- The whistleblower that files a False Claims Act suit receives an award only *if, and after*, the Government recovers money from the defendant as a result of the lawsuit.

#### **How Much Money Can an individual Receive for Filing a *Qui Tam* Lawsuit?**

- Generally, the court may award between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement.
- The amount of the award depends, in part, upon:
  1. if the government participates in the suit and
  2. the extent to which the person substantially contributed to the prosecution of the action

#### **Is A Whistle Blower Protected Under the FCA?**

Under Section 3730(h) of the False Claims Act, any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the Act is entitled to any relief necessary to make the employee whole.

## **Compliance:**

AHCCCS will identify Entities who received or made Medicaid payments at or above the annual threshold of \$5,000,000 using claims encounter data. AHCCCS will send written information including an [audit checklist \(attached\)](#) outlining the requirements to the entities that meet this threshold. The entities will be required to implement the required policies and procedures as well as provide the required training to all employees including management and any contract or agent. Once the entity has implemented all requirements they must sign and date the certification statement and return to AHCCCS Office of Program Integrity.

The AHCCCS Office of Program Integrity will use information compiled from the random sample to conduct random audits to determine if the affected entities are in compliance. Entities will be provided with a list of inspection items prior to any inspection. Sites will be selected randomly and unannounced onsite visits will be conducted. The inspection will consist of reviews of pertinent records and interviews of employees and management to determine compliance with the requirements established by the DRA, AHCCCS policies and contract requirements. Each entity may be subject to the audit cycle at least once every three years.

Within ten working days of the inspection a written notification will be sent to the Compliance Officer or other management official notifying them of the results of the inspection. If the entity is found to be compliant then no further action will be taken.

If it is found that an entity is not compliant the following measures will be pursued:

- 1st Violation - AHCCCS will send written notification detailing the items that are out of compliance and advising corrective action. AHCCCS will provide 30 days to correct the violation and will re-visit the entity to check for compliance within 45-60 calendar days.

If the entity disagrees with the original findings they may send a rebuttal letter to the Director, Office of Program Integrity within 30 calendar days of receipt of the notice of violation, outlining the reasons for the disagreement. The rebuttal letter must contain sufficient detail as to clearly dispute the original findings.

The Director (or designee), Office of Program Integrity will issue a decision letter within 14 calendar days after the receipt of the rebuttal letter.

The decision letter will notify the entity if their rebuttal was successful or unsuccessful. If the Director determines that the rebuttal was unsuccessful then a subsequent inspection will be conducted within 45 – 60 days.

- 2<sup>nd</sup> and subsequent violation – AHCCCS will send written notification detailing the items that are out of compliance. The AHCCCS provider agreement states, in part, that AHCCCS shall be entitled to offset against any amounts due the Provider any overpayments, expenses or costs incurred by AHCCCS concerning the Provider's non-compliance with this agreement. Sanctions, if imposed, will be to offset the costs associated with re-inspection. The costs will be a minimum of \$500.00 to a maximum of \$1,500.00.

**The following are state statutes relating to false claims:**

**Arizona Revised Statutes (ARS)**

- ARS 13-1802: Theft
- ARS 13-2002: Forgery
- ARS 13-2310: Fraudulent schemes and artifices
- ARS 13-2311: Fraudulent schemes and practices; willful concealment
- ARS 36-2918: Duty to report fraud

**Each Organization should have a handbook or other written policies that provide information to all employees, contractors and agents regarding:**

1. Detailed written policies and procedures for detecting fraud, waste and abuse
2. Specific discussions regarding the False Claims Act
3. The rights of employees to be protected as whistle-blowers
4. A discussion of the state statutes relating to false claims

**Web Sites for obtaining additional information:**

- Arizona Revised Statutes  
[www.azleg.state.az.us/ArizonaRevisedStatutes.asp](http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp)
- Deficit Reduction Act – Public Law 109-171  
[www.gpoaccess.gov/plaws/index.html](http://www.gpoaccess.gov/plaws/index.html)  
(insert public law 109-171 in the quick search box)